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December 18, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Comments
MM Docket No. 92-241
RM-8084
(Camas, Washington and Seaside, Oregon)


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Dear Ms. Searcy:

On behalf of Pacific Northwest Broadcasting Corporation, we hereby submit an original and four copies of its comments in RM-8084. These comments are respectfully directed to the Chief, Allocations Branch.

Please direct any questions or correspondence concerning this matter to our offices.

Sincerely yours,


John F. Garziglia
Louise Cybulski
Counsel for Pacific Northwest
Broadcasting Corporation

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 92-241
Table of Allotments,) RM-8084
FM Broadcast Stations)
(Camas, Washington,)
and Seaside, Oregon))

To: Chief, Allocations Branch

COMMENTS

Pacific Northwest Broadcasting Corporation, the permittee of KMUZ-FM, Camas, Washington (license application pending), by its attorneys, pursuant to the Notice of Proposed Rule Making and Order to Show Cause ("NPRM"), DA 92-1333, released October 26, 1992, hereby submits its comments in this proceeding in support of a substitution of Channel 234C2 for Channel 234C3 at Camas, Washington, a modification of the KMUZ-FM permit to specify operation on Channel 234C2, and the substitution of Channel 235A for Channel 234A at Seaside, Oregon. In support thereof, the following is submitted:

1. Pacific Northwest Broadcasting Corporation, by these comments, hereby incorporates by reference its August 28, 1992 Petition for Rule Making and Request for Issuance of Order to Show Cause. Further, Pacific Northwest Broadcasting Corporation restates its present intention to apply for Channel 234C2 at Camas, Washington if it is allotted, and if authorized, to build a station promptly.

2. On December 10, 1992, Monte Corporation, the permittee of KBRD(FM), Seaside, Oregon, filed a counterproposal in this proceeding^{1/} proposing that Channel 251A be substituted for Channel 234A at Seaside, Oregon, at special reference coordinates, rather than the substitution of Channel 235A. Assuming that the Commission accepts this filing of Monte Corporation as a counterproposal in this proceeding, Pacific Northwest Broadcasting Corporation reserves the right to fully comment on the counterproposal upon the acceptance of the counterproposal. Suffice it to say, however, Pacific Northwest Broadcasting Corporation takes no position on whether the permit for KBRD(FM) at Seaside, Oregon is modified to specify operation on Channel 235A (as proposed in the Pacific Northwest Broadcasting Corporation petition) or on Channel 251A (as proposed in the Monte Corporation counterproposal).

3. Pacific Northwest Broadcasting Corporation is willing to reimburse Monte Corporation for its reasonable and prudent expenses incurred in changing the channel of KBRD(FM) to Channel 235A at its existing transmitter site. Likewise, if the Commission on its own motion deems it in the public interest to substitute another equivalent Class A channel for Channel 234A at Seaside, Oregon at the present reference coordinates of the existing KBRD(FM) transmitter site, Pacific Northwest Broadcasting Corporation likewise is prepared to reimburse Monte Corpora-

^{1/} The filing of that counterproposal has not yet been placed on public notice. Monte Corporation should note that the petitioner's call letters are "KMUZ-FM", not "WMUZ-FM".

tion under applicable case law. See Milan, Metter, Swainsboro and Wrens, Georgia, 6 FCC Rcd 5793 (1991), citing Circleville, Ohio, 8 FCC 2d 159 (1967).^{2/}

4. If pursuant to the counterproposal of Monte Corporation the Commission allots a Class A channel at Seaside, Oregon that is not fully spaced at the present coordinates of the KBRD(FM) authorization, necessitating a change in the construction permit site for KBRD(FM), it is the position of Pacific Northwest Broadcasting Corporation that it has no obligation to reimburse Monte Corporation for any of its expenses in changing channels or relocating its transmitter site, contrary to the suggestion of Monte Corporation in paragraph 9 of its December 10, 1992 counterproposal. Monte Corporation cites both Milan, Metter, Swainsboro and Wrens, Georgia and Circleville, Ohio as support for requiring Pacific Northwest Broadcasting Corporation to reimburse Monte Corporation for its expenses for relocating its transmitter site. Neither of these cases stand for that proposition.

5. Absent an agreement between Pacific Northwest Broadcasting Corporation and Monte Corporation (of which there is none),

^{2/} It is the position of Pacific Northwest Broadcasting Corporation that Monte Corporation be reimbursed only for the costs of changing channels based upon the extent of construction existing as of the date of the release of the NPRM. It is the belief of Pacific Northwest Broadcasting Corporation that no construction on the Channel 234A KBRD(FM) facility at Seaside had taken place as of the date of the NPRM. Accordingly, reimbursement is most likely limited to only the costs of the engineering and filing fees necessary for KBRD(FM) to modify its construction permit to Channel 235A.

Pacific Northwest Broadcasting Corporation is not obligated to pay for the relocation of Monte Corporation's transmitter site. In fact, Pacific Northwest Broadcasting Corporation would not have been able to make its proposal but for the fact that it could propose the substitution of Channel 235A for Channel 234A at Seaside, Oregon without the necessity of changing transmitter sites. See e.g. Claremore, Locust Grove and Nowata, Oklahoma and Barling, Arkansas, 3 FCC Rcd 4037 (1988) (it is Commission policy not to require a station to involuntarily relocate its transmitter site).


6. Monte Corporation, of course, is free to suggest an alternate Class A channel that will work at its present transmitter site coordinates and as stated above, Pacific Northwest Broadcasting Corporation will reimburse Monte Corporation for its reasonable and prudent expenses incurred in changing the operating frequency. See Blacksburg and Roanoke, Virginia and Lewisburg, West Virginia, DA 92-1008, released August 25, 1992 (different channel than that proposed by petitioner that can also be used at the station's specified transmitter site allotted at the request of the station). If Monte Corporation pursues its counterproposal on its own, however, and is granted a channel for which a different transmitter location for its facility is required, Pacific Northwest Broadcasting Corporation should not be required to reimburse Monte Corporation for any of its expenses.

WHEREFORE, for the reasons above, Channel 234C2 should be substituted for Channel 234C3 at Camas, Washington and the permit of KMUZ-FM, Camas, Washington modified to specify operation on Channel 234C2, and Channel 235A (or other suitable channel) should be substituted for Channel 234A at Seaside, Oregon.

Respectfully submitted,

**PACIFIC NORTHWEST
BROADCASTING CORPORATION**

By: _____


John F. Garziglia
Louise Cybulski
Its Attorneys

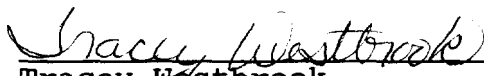
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December 18, 1992

CERTIFICATE OF SERVICE

I, Tracey Westbrook, a secretary in the law firm of Pepper & Corazzini, do hereby certify that a true copy of the foregoing "Comments" was sent this 18th day of December, 1992, by U.S. first class mail, postage prepaid, to the following:

Susan H. Rosenau, Esquire
Haley Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, Virginia 22203-1633
(Counsel for Monte Corporation)



Tracey Westbrook